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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 PATAGONIA, INC.,

11 Plaintiff,

12 v.

13 NORDSTROM, INC.,

14 Defendant.
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Case No. 2:23-cv-04168-MCS-AGR

**STIPULATED PROTECTIVE
ORDER**

**NOTE CHANGES MADE BY
COURT**

17 1. PURPOSES AND LIMITATIONS

18 Disclosure and discovery activity in this action are likely to involve
19 production of confidential, proprietary, or private information for which special
20 protection from public disclosure and from use for any purpose other than
21 prosecuting this litigation may be warranted. Accordingly, the parties hereby
22 stipulate to and petition the court to enter the following Stipulated Protective Order.
23 The parties acknowledge that this Order does not confer blanket protections on all
24 disclosures or responses to discovery and that the protection it affords from public
25 disclosure and use extends only to the limited information or items that are entitled
26 to confidential treatment under the applicable legal principles. The parties further
27 acknowledge that this Stipulated Protective Order does not entitle them to file
28 confidential information under seal; the Court's Local Rules sets forth the

1 procedures that must be followed and the standards that will be applied when a party
2 seeks permission from the court to file material under seal.

3 2. DEFINITIONS

4 2.1 Challenging Party: a Party or Non-Party that challenges the
5 designation of information or items under this Order.

6 2.2 “CONFIDENTIAL” Information or Items: information
7 (regardless of how it is generated, stored or maintained) or tangible things that
8 qualify for protection under Federal Rule of Civil Procedure 26(c).

9 2.3 Counsel (without qualifier): Outside Counsel of Record (as well
10 as their support staff).

11 2.4 Designated House Counsel: House Counsel – limited to three (3)
12 attorneys per party – who seek access to “HIGHLY CONFIDENTIAL –
13 ATTORNEYS’ EYES ONLY” information in this matter.

14 2.5 Designating Party: a Party or Non-Party that designates
15 information or items that it produces in disclosures or in responses to discovery as
16 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
17 ONLY”.

18 2.6 Disclosure or Discovery Material: all items or information,
19 regardless of the medium or manner in which it is generated, stored, or maintained
20 (including, among other things, testimony, transcripts, and tangible things), that are
21 produced or generated in disclosures or responses to discovery in this matter.

22 2.7 Expert: a person with specialized knowledge or experience in a
23 matter pertinent to the litigation who (1) has been retained by a Party or its counsel
24 to serve as an expert witness or as a consultant in this action, (2) is not a past or
25 current employee of a Party or of a Party’s competitor, and (3) at the time of
26 retention, is not anticipated to become an employee of a Party or of a Party’s
27 competitor.

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1 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
 2 Information or Items: extremely sensitive “Confidential Information or Items,”
 3 disclosure of which to another Party or Non-Party would create a substantial risk of
 4 serious harm that could not be avoided by less restrictive means.

5 2.9 House Counsel: attorneys who are employees of a party to this
 6 action. House Counsel does not include Outside Counsel of Record or any other
 7 outside counsel.

8 2.10 Non-Party: any natural person, partnership, corporation,
 9 association, or other legal entity not named as a Party to this action.

10 2.11 Outside Counsel of Record: attorneys who are not employees of
 11 a party to this action but are retained to represent or advise a party to this action and
 12 have appeared in this action on behalf of that party or are affiliated with a law firm
 13 which has appeared on behalf of that party.

14 2.12 Party: any party to this action, including all of its officers,
 15 directors, employees, consultants, retained experts, and Outside Counsel of Record
 16 (and their support staffs).

17 2.13 Producing Party: a Party or Non-Party that produces Disclosure
 18 or Discovery Material in this action.

19 2.14 Professional Vendors: persons or entities that provide litigation
 20 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
 21 demonstrations, and organizing, storing, or retrieving data in any form or medium)
 22 and their employees and subcontractors.

23 2.15 Protected Material: any Disclosure or Discovery Material that is
 24 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL –
 25 ATTORNEYS’ EYES ONLY.”

26 2.16 Receiving Party: a Party that receives Disclosure or Discovery
 27 Material from a Producing Party.

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1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
 3 Protected Material (as defined above), but also (1) any information copied or
 4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
 5 compilations of Protected Material; and (3) any testimony, conversations, or
 6 presentations by Parties or their Counsel that might reveal Protected Material.
 7 However, the protections conferred by this Stipulation and Order do not cover the
 8 following information: (a) any information that is in the public domain at the time of
 9 disclosure to a Receiving Party or becomes part of the public domain after its
 10 disclosure to a Receiving Party as a result of publication not involving a violation of
 11 this Order, including becoming part of the public record through trial or otherwise;
 12 and (b) any information known to the Receiving Party prior to the disclosure or
 13 obtained by the Receiving Party after the disclosure from a source who obtained the
 14 information lawfully and under no obligation of confidentiality to the Designating
 15 Party. Any use of Protected Material at trial shall be governed by a separate
 16 agreement or order.

17 4. DURATION

18 Even after final disposition of this litigation, the confidentiality obligations
 19 imposed by this Order shall remain in effect until a Designating Party agrees
 20 otherwise in writing or a court order otherwise directs. Final disposition shall be
 21 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
 22 or without prejudice; and (2) final judgment herein after the completion and
 23 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
 24 including the time limits for filing any motions or applications for extension of time
 25 pursuant to applicable law.

26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for
 28 Protection. Each Party or Non-Party that designates information or items for

1 protection under this Order must take care to limit any such designation to specific
2 material that qualifies under the appropriate standards. To the extent it is practical to
3 do so, the Designating Party must designate for protection only those parts of
4 material, documents, items, or oral or written communications that qualify – so that
5 other portions of the material, documents, items, or communications for which
6 protection is not warranted are not swept unjustifiably within the ambit of this
7 Order.

8 Mass, indiscriminate, or routinized designations are prohibited. Designations
9 that are shown to be clearly unjustified or that have been made for an improper
10 purpose (e.g., to unnecessarily encumber or retard the case development process or
11 to impose unnecessary expenses and burdens on other parties) expose the
12 Designating Party to sanctions.

13 If it comes to a Designating Party's attention that information or items that it
14 designated for protection do not qualify for protection at all or do not qualify for the
15 level of protection initially asserted, that Designating Party must promptly notify all
16 other parties that it is withdrawing the mistaken designation.

17 5.2 Designation as "HIGHLY CONFIDENTIAL – ATTORNEYS'
18 EYES ONLY": Any party may designate materials as "HIGHLY CONFIDENTIAL
19 – ATTORNEYS' EYES ONLY" if, in the good faith belief of such Party, the
20 information contained in the materials is not publicly available and is among that
21 considered to be most sensitive by the Party, including but not limited to materials
22 with potential value to competitors, such as trade secret or other confidential
23 research, development, financial or other commercially sensitive information.

24 5.3 Manner and Timing of Designations. Except as otherwise
25 provided in this Order (see, e.g., second paragraph of section 5.4 below), or as
26 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
27 protection under this Order must be clearly so designated before the material is
28 disclosed or produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic
3 documents, but excluding transcripts of depositions or other pretrial or trial
4 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or
5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that
6 contains protected material. If only a portion or portions of the material on a page
7 qualifies for protection, the Producing Party also must clearly identify the protected
8 portion(s) (e.g., by making appropriate markings in the margins) and must specify,
9 for each portion, the level of protection being asserted.

10 A Party or Non-Party that makes original documents or materials available for
11 inspection need not designate them for protection until after the inspecting Party has
12 indicated which material it would like copied and produced. During the inspection
13 and before the designation, all of the material made available for inspection shall be
14 deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the
15 inspecting Party has identified the documents it wants copied and produced, the
16 Producing Party must determine which documents, or portions thereof, qualify for
17 protection under this Order. Then, before producing the specified documents, the
18 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
19 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that
20 contains Protected Material. If only a portion or portions of the material on a page
21 qualifies for protection, the Producing Party also must clearly identify the protected
22 portion(s) (e.g., by making appropriate markings in the margins) and must specify,
23 for each portion, the level of protection being asserted.

24 (b) for testimony given in deposition ~~or in other pretrial or trial~~
25 ~~proceedings~~, that the Designating Party identify on the record, before the close of
26 the deposition, ~~hearing, or other proceeding~~, all protected testimony and specify the
27 level of protection being asserted. When it is impractical to identify separately each
28 portion of testimony that is entitled to protection and it appears that substantial

1 portions of the testimony may qualify for protection, the Designating Party may
2 invoke on the record (before the deposition, ~~hearing, or other proceeding~~ is
3 concluded) a right to have up to 21 days to identify the specific portions of the
4 testimony as to which protection is sought and to specify the level of protection
5 being asserted. Only those portions of the testimony that are appropriately
6 designated for protection within the 21 days shall be covered by the provisions of
7 this Stipulated Protective Order. Alternatively, a Designating Party may specify, at
8 the deposition or up to 21 days afterwards if that period is properly invoked, that the
9 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

11 Parties shall give the other parties notice if they reasonably expect a
12 deposition, ~~hearing or other proceeding~~ to include Protected Material so that the
13 other parties can ensure that only authorized individuals who have signed the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
15 proceedings. The use of a document as an exhibit at a deposition shall not in any
16 way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
17 ATTORNEYS’ EYES ONLY.”

18 Transcripts containing Protected Material shall have an obvious legend on the
19 title page that the transcript contains Protected Material, and the title page shall be
20 followed by a list of all pages (including line numbers as appropriate) that have been
21 designated as Protected Material and the level of protection being asserted by the
22 Designating Party. The Designating Party shall inform the court reporter of these
23 requirements. Any transcript that is prepared before the expiration of a 21-day
24 period for designation shall be treated during that period as if it had been designated
25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
26 otherwise agreed. After the expiration of that period, the transcript shall be treated
27 only as actually designated.

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(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

5.4 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time **consistent with the court’s scheduling order**. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of the designation(s) it is challenging and describing the basis for each challenge. In the event that a reasonably small set of documents are subject to challenge, the Challenging Party will identify the designations by Bates number. In the event that the Challenging Party’s concerns are broader, applying to tranches or categories of documents or material, the Challenging Party may identify the issues by reference to such tranches or

1 categories. To avoid ambiguity as to whether a challenge has been made, the written
2 notice must recite that the challenge to confidentiality is being made in accordance
3 with this specific paragraph of the Protective Order. The parties shall attempt to
4 resolve each challenge in good faith and must begin the process by conferring
5 directly (in voice to voice dialogue; other forms of communication are not
6 sufficient) within 14 days of the date of service of notice. In conferring, the
7 Challenging Party must explain the basis for its belief that the confidentiality
8 designation was not proper and must give the Designating Party an opportunity to
9 review the designated material, to reconsider the circumstances, and, if no change in
10 designation is offered, to explain the basis for the chosen designation. A
11 Challenging Party may proceed to the next stage of the challenge process only if it
12 has engaged in this meet and confer process first or establishes that the Designating
13 Party is unwilling to participate in the meet and confer process in a timely manner.

14 6.3 Judicial Intervention. If the Parties cannot resolve a challenge
15 without court intervention, the Designating Party shall file and serve a motion to
16 retain confidentiality within 21 days of the initial notice of challenge or within 14
17 days of the parties agreeing that the meet and confer process will not resolve their
18 dispute, whichever is earlier. Each such motion must be accompanied by a
19 competent declaration affirming that the movant has complied with the meet and
20 confer requirements imposed in the preceding paragraph. Failure by the Designating
21 Party to make such a motion including the required declaration within 21 days (or
22 14 days, if applicable) shall automatically waive the confidentiality designation for
23 each challenged designation. In addition, the Challenging Party may file a motion
24 challenging a confidentiality designation at any time **consistent with the court's**
25 **scheduling order** if there is good cause for doing so, including a challenge to the
26 designation of a deposition transcript or any portions thereof. Any motion brought
27 pursuant to this provision must be accompanied by a competent declaration
28 affirming that the movant has complied with the meet and confer requirements

1 imposed by the preceding paragraph.

2 The burden of persuasion in any such challenge proceeding shall be on the
3 Designating Party. Frivolous challenges and those made for an improper purpose
4 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
5 expose the Challenging Party to sanctions. Unless the Designating Party has waived
6 the confidentiality designation by failing to file a motion to retain confidentiality as
7 described above, all parties shall continue to afford the material in question the level
8 of protection to which it is entitled under the Producing Party's designation until the
9 court rules on the challenge.

10 7. ACCESS TO AND USE OF PROTECTED MATERIAL

11 7.1 Basic Principles. A Receiving Party may use Protected Material
12 that is disclosed or produced by another Party or by a Non-Party in connection with
13 this case only for prosecuting, defending, or attempting to settle this litigation. Such
14 Protected Material may be disclosed only to the categories of persons and under the
15 conditions described in this Order. When the litigation has been terminated, a
16 Receiving Party must comply with the provisions of section 13 below (FINAL
17 DISPOSITION).

18 Protected Material must be stored and maintained by a Receiving Party at a
19 location and in a secure manner that ensures that access is limited to the persons
20 authorized under this Order.

21 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
22 otherwise ordered by the court or permitted in writing by the Designating Party, a
23 Receiving Party may disclose any information or item designated
24 "CONFIDENTIAL" only to:

25 (a) the Receiving Party's Outside Counsel of Record in this action, as well
26 as employees of said Outside Counsel of Record to whom it is reasonably necessary
27 to disclose the information for this litigation and who have signed the
28 "Acknowledgment and Agreement to Be Bound" that is attached hereto as

1 Exhibit A;

2 (b) the officers, directors, and employees of the Receiving Party (including
3 House Counsel) to whom disclosure is reasonably necessary for this litigation and
4 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

5 (c) Experts (as defined in this Order) of the Receiving Party to whom
6 disclosure is reasonably necessary for this litigation and who have signed the
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 (d) the court and its personnel;

9 (e) court reporters and their staff, professional jury or trial consultants, and
10 Professional Vendors to whom disclosure is reasonably necessary for this litigation
11 and who have signed the “Acknowledgment and Agreement to Be Bound”
12 (Exhibit A);

13 (f) during their depositions, witnesses in the action to whom disclosure is
14 reasonably necessary and who have signed the “Acknowledgment and Agreement to
15 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
16 by the court. Pages of transcribed deposition testimony or exhibits to depositions
17 that reveal Protected Material must be separately bound by the court reporter and
18 may not be disclosed to anyone except as permitted under this Stipulated Protective
19 Order.

20 (g) the author or recipient of a document containing the information or a
21 custodian or other person who otherwise possessed or knew the information.

22 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
23 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
24 writing by the Designating Party, a Receiving Party may disclose any information or
25 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only
26 to:

27 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
28 as employees of said Outside Counsel of Record to whom it is reasonably necessary

1 to disclose the information for this litigation and who have signed the
 2 “Acknowledgment and Agreement to Be Bound” that is attached hereto as
 3 Exhibit A;

4 (b) Designated House Counsel of the Receiving Party – limited to three (3)
 5 attorneys as referenced in paragraph 2.4: (1) who has no involvement in competitive
 6 decision-making, (2) to whom disclosure is reasonably necessary for this litigation,
 7 (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
 8 A), and (4) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have
 9 been followed;

10 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably
 11 necessary for this litigation, (2) who have signed the “Acknowledgment and
 12 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in
 13 paragraph 7.4(a), below, have been followed;

14 (d) the court and its personnel;

15 (e) court reporters and their staff, professional jury or trial consultants, and
 16 Professional Vendors to whom disclosure is reasonably necessary for this litigation
 17 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
 18 A); and

19 (f) the author or recipient of a document containing the information or a
 20 custodian or other person who otherwise possessed or knew the information.

21 7.4 Procedures for Approving or Objecting to Disclosure of
 22 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items
 23 to Experts.

24 (a)(1) Unless otherwise ordered by the court or agreed to in writing by
 25 the Designating Party, a Party that seeks to disclose to Designated House Counsel
 26 any information or item that has been designated “HIGHLY CONFIDENTIAL –
 27 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a
 28 written request to the Designating Party that (1) sets forth the full name of the

1 Designated House Counsel and the city and state of his or her residence, and (2)
 2 describes the Designated House Counsel's current and reasonably foreseeable future
 3 primary job duties and responsibilities in sufficient detail to determine if House
 4 Counsel is involved, or may become involved, in any competitive decision-making.

5 (a)(2) Unless otherwise ordered by the court or agreed to in writing by
 6 the Designating Party, a Party that seeks to disclose to an Expert (as defined in this
 7 Order) any information or item that has been designated "HIGHLY
 8 CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to paragraph 7.3(c)
 9 first must make a written request to the Designating Party that (1) identifies the
 10 general categories of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
 11 information that the Receiving Party seeks permission to disclose to the Expert, (2)
 12 sets forth the full name of the Expert and the city and state of his or her primary
 13 residence, (3) attaches a copy of the Expert's current resume, (4) identifies the
 14 Expert's current employer(s), (5) identifies each person or entity from whom the
 15 Expert has received compensation or funding for work in his or her areas of
 16 expertise or to whom the expert has provided professional services, including in
 17 connection with a litigation, at any time during the preceding three years,¹ and (6)
 18 identifies (by name and number of the case, filing date, and location of court) any
 19 litigation in connection with which the Expert has offered expert testimony,
 20 including through a declaration, report, or testimony at a deposition or trial, during
 21 the preceding three years.

22 (b) A Party that makes a request and provides the information
 23 specified in the preceding respective paragraphs may disclose the subject Protected
 24 Material to the identified Designated House Counsel or Expert unless, within 5
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26 ¹ If the Expert believes any of this information is subject to a confidentiality
 27 obligation to a third-party, then the Expert should provide whatever information the
 28 Expert believes can be disclosed without violating any confidentiality agreements,
 and the Party seeking to disclose to the Expert shall be available to meet and confer
 with the Designating Party regarding any such engagement.

1 business days of delivering the request, the Party receives a written objection from
 2 the Designating Party. Any such objection must set forth in detail the grounds on
 3 which it is based.

4 (c) A Party that receives a timely written objection must meet and
 5 confer with the Designating Party (through direct voice to voice dialogue) to try to
 6 resolve the matter by agreement within seven days of the written objection. If no
 7 agreement is reached, the Party seeking to make the disclosure to Designated House
 8 Counsel or the Expert may file a motion seeking permission from the court to do so.
 9 Any such motion must describe the circumstances with specificity, set forth in detail
 10 the reasons why the disclosure to Designated House Counsel or the Expert is
 11 reasonably necessary, assess the risk of harm that the disclosure would entail, and
 12 suggest any additional means that could be used to reduce that risk. In addition, any
 13 such motion must be accompanied by a competent declaration describing the
 14 parties' efforts to resolve the matter by agreement (i.e., the extent and the content of
 15 the meet and confer discussions) and setting forth the reasons advanced by the
 16 Designating Party for its refusal to approve the disclosure.

17 In any such proceeding, the Party opposing disclosure to Designated House
 18 Counsel or the Expert shall bear the burden of proving that the risk of harm that the
 19 disclosure would entail (under the safeguards proposed) outweighs the Receiving
 20 Party's need to disclose the Protected Material to its Designated House Counsel or
 21 Expert.

22 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
 23 IN OTHER LITIGATION

24 If a Party is served with a subpoena or a court order issued in other litigation
 25 that compels disclosure of any information or items designated in this action as
 26 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
 27 ONLY" that Party must:

28 (a) promptly notify in writing the Designating Party. Such notification

1 shall include a copy of the subpoena or court order;

2 (b) promptly notify in writing the party who caused the subpoena or order
3 to issue in the other litigation that some or all of the material covered by the
4 subpoena or order is subject to this Protective Order. Such notification shall include
5 a copy of this Stipulated Protective Order; and

6 (c) cooperate with respect to all reasonable procedures sought to be
7 pursued by the Designating Party whose Protected Material may be affected.

8 If the Designating Party timely seeks a protective order, the Party served with
9 the subpoena or court order shall not produce any information designated in this
10 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
11 EYES ONLY” before a determination by the court from which the subpoena or
12 order issued, unless the Party has obtained the Designating Party’s permission. The
13 Designating Party shall bear the burden and expense of seeking protection in that
14 court of its confidential material – and nothing in these provisions should be
15 construed as authorizing or encouraging a Receiving Party in this action to disobey a
16 lawful directive from another court.

17 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
18 PRODUCED IN THIS LITIGATION

19 (a) The terms of this Order are applicable to information produced by a
20 Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. Such information produced by
22 Non-Parties in connection with this litigation is protected by the remedies and relief
23 provided by this Order. Nothing in these provisions should be construed as
24 prohibiting a Non-Party from seeking additional protections.

25 (b) In the event that a Party is required, by a valid discovery request, to
26 produce a Non-Party’s confidential information in its possession, and the Party is
27 subject to an agreement with the Non-Party not to produce the Non-Party’s
28 confidential information, then the Party shall:

1 1. promptly notify in writing the Requesting Party and the Non-
2 Party that some or all of the information requested is subject to a confidentiality
3 agreement with a Non-Party;

4 2. promptly provide the Non-Party with a copy of the Stipulated
5 Protective Order in this litigation, the relevant discovery request(s), and a
6 reasonably specific description of the information requested; and

7 3. make the information requested available for inspection by the
8 Non-Party.

9 (c) If the Non-Party fails to object or seek a protective order from this
10 court within 14 days of receiving the notice and accompanying information, the
11 Receiving Party may produce the Non-Party's confidential information responsive
12 to the discovery request. If the Non-Party timely seeks a protective order, the
13 Receiving Party shall not produce any information in its possession or control that is
14 subject to the confidentiality agreement with the Non-Party before a determination
15 by the court. Absent a court order to the contrary, the Non-Party shall bear the
16 burden and expense of seeking protection in this court of its Protected Material.

17 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

18 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
19 Protected Material to any person or in any circumstance not authorized under this
20 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
21 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
22 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
23 persons to whom unauthorized disclosures were made of all the terms of this Order,
24 and (d) request such person or persons to execute the "Acknowledgment and
25 Agreement to Be Bound" that is attached hereto as Exhibit A.

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11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and €, insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with the relevant Local Rules. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. A sealing order will issue only upon a request establishing that the Protected Material at issue is entitled to protection under the law.

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13. FINAL DISPOSITION

2 Within 60 days after the final disposition of this action, as defined in Section
3 4, each Receiving Party must return all Protected Material to the Producing Party or
4 destroy such material. As used in this subdivision, "all Protected Material" includes
5 all copies, abstracts, compilations, summaries, and any other format reproducing or
6 capturing any of the Protected Material. Whether the Protected Material is returned
7 or destroyed, the Receiving Party must submit a written certification to the
8 Producing Party (and, if not the same person or entity, to the Designating Party) by
9 the 60-day deadline that (1) identifies (by category, where appropriate) all the
10 Protected Material that was returned or destroyed and (2) affirms that the Receiving
11 Party has not retained any copies, abstracts, compilations, summaries or any other
12 format reproducing or capturing any of the Protected Material. Notwithstanding this
13 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
14 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
15 deposition and trial exhibits, expert reports, attorney work product, and consultant
16 and expert work product, even if such materials contain Protected Material. Any
17 such archival copies that contain or constitute Protected Material remain subject to
18 this Protective Order as set forth in Section 4 (DURATION).

19 Pursuant to stipulation by counsel for the parties,

20 IT IS SO ORDERED.

21
22 Dated: 11/13/2023

23
24 

25 Honorable Alicia G. Rosenberg
26 United States Magistrate Judge
27
28

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Stipulated Protective Order that
 was issued by the District Court in the case of Patagonia, Inc. v. Nordstrom, Inc.,
 Case No. 2:23-cv-04168-MCS-AGR. I agree to comply with and to be bound by all
 the terms of this Stipulated Protective Order and I understand and acknowledge that
 failure to so comply could expose me to sanctions and punishment in the nature of
 contempt. I solemnly promise that I will not disclose in any manner any information
 or item that is subject to this Stipulated Protective Order to any person or entity
 except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
 Court for the Central District of California for the purpose of enforcing the terms of
 this Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action.

I hereby appoint _____ [print or type full
 name] of _____ [print or type full address
 and telephone number] as my California agent for service of process in connection
 with this action or any proceedings related to enforcement of this Stipulated
 Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
 [printed name]

Signature: _____
 [signature]